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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,534	03/17/2006	Antonio Toro	267197	2785
22852	7590	02/27/2009		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
EXAMINER				
KWON, ASHLEY M				
ART UNIT		PAPER NUMBER		
4111				
MAIL DATE		DELIVERY MODE		
02/27/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/572,534

Applicant(s)

TORO, ANTONIO

Examiner

ASHLEY KWON

Art Unit

4111

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9-13 is/are rejected.
- 7) ☒ Claim(s) 5-8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/17/06 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date 3/17/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 102

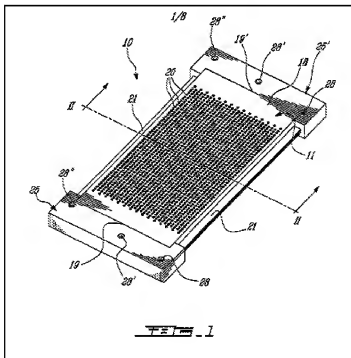
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

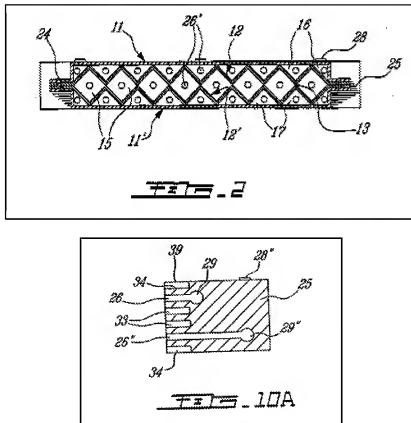
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Condeescu et al. (WO 02/023645) (hereinafter "Condeescu").

Regarding claim 1, Condeescu teaches a bipolar separator (bipolar separator plate assembly, 10) for a fuel cell stack, comprising a cathode sheet and an anode sheet (distributor plates 11, 11'), at least one of said sheet provided with fluid passage holes (perforated with holes, 20) (see pg. 5, lines 1-7 and 24-25; figs. 1 and 2), wherein said sheets are welded through at least one corrugated conductive element (separator plates 12, 12') (see pg. 6, lines 1-7) and said sheets delimit a passage section of a cooling fluid (connector channels 29, 29', 29'') (see pg. 6, lines 26-29) (see fig. 10A).



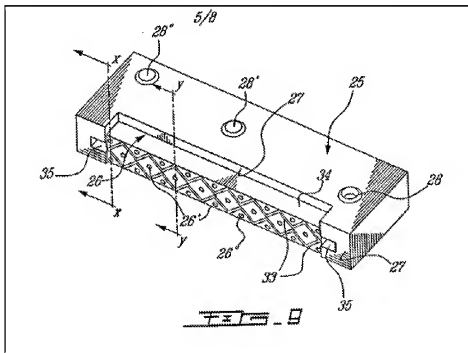


The fact that applicant calls the sheets "cathode" and "anode sheet" is intended use. Depending on which side of the fuel cell the sheets are on determines whether it is the anode or cathode side. Fig. 2 clearly shows that the anode and cathode sheet (distributor plates 11, 11') are welded (resistance welding) through the corrugated conductive element (separator plates 12, 12') at 24 (see pg. 6, lines 1-7). Therefore this claim is anticipated.

Regarding claim 2, Condeescu teaches the separator of claim 2, wherein said fluid passage holes (holes, 20) are gas feed and/or discharge holes disposed in one or more peripheral regions of at least one sheet. Gas fed through the groups of gas channels (16 and 17) permeate through the holes (20) of the distributor plate (11) (see

pg. 5, line 28-31). It is clearly shown in fig. 1 that the holes are placed throughout the sheet. Therefore this claim is anticipated.

Regarding claim 4, Condeescu teaches the separator of claim 1, wherein at least one corrugated conductive element (separator plates 12, 12') adjoins said cathode and anode sheets (distributor plates 11, 11') generally along the whole surface of the separator (see fig. 2) and said cooling fluid passage section (connector channels 29, 29', 29'') comprises channels delimited by the surface of said corrugated conductive element (see fig. 9 and 10A)



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Condeescu as applied to claims 1, 2, and 4 above, and further in view of Applicant's Admission of Prior Art (AAPA).

Condeescu fails to teach the separator of claim 1 wherein said fluid passage holes comprise calibrated orifices for feeding a flow of said cooling fluid to the fuel cells. He teaches that gas fed through outer gas channels 16 and 17 permeate through the perforated holes (20) of the distributor plates (11, 11') (see pg. 5, lines 23-33).

However, a person of ordinary skill in the art would be aware that gas can be used as a cooling fluid. Furthermore, applicant admits that it is known to flow cooling water through appropriate calibrated holes in a separator plate (see pg. 4). Therefore, it

would have been obvious to a person of ordinary skill in the art to flow a cooling fluid through the calibrated orifices in the separator plate in order to allow the cooling fluid to penetrate inside the fuel cell and allow for effective cooling (see pg. 4).

Claims 1 and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Facci et al. (WO 02/078112) (hereinafter "Facci") in view of Condeescu.

Regarding claim 1, Facci teaches a bipolar separator (bipolar conductive sheet, 2) for a fuel cell stack (see pg. 6 line 1).

Facci fails to teach the bipolar separator comprising a cathode sheet and an anode sheet, at least one of said sheets provided with fluid passage holes, wherein said sheets are welded or metallurgically bonded through at least one corrugated conductive element and said sheets delimit a passage section of a cooling fluid.

However, Condeescu teaches a bipolar separator (bipolar separator plate assembly, 10) for a fuel cell stack, comprising a cathode sheet and an anode sheet (distributor plates 11, 11'), at least one of said sheets provided with fluid passage holes (perforated with holes, 20) (see pg. 5, lines 1-7 and 24-25; figs. 1 and 2), wherein said sheets are welded through at least one corrugated conductive element (separator plates 12, 12') (see pg. 6, lines 1-7) and said sheets delimit a passage section of a cooling fluid (connector channels 29, 29', 29'') (see pg. 6, lines 26-29) (see fig. 10A). The fact that applicant calls the sheets "cathode" and "anode sheet" is intended use. Depending on which side of the fuel cell the sheets are on determines whether it is the anode or cathode side. Fig. 2 clearly shows that the anode and cathode sheet (distributor plates

11, 11') are welded (resistance welding) through the corrugated conductive element (separator plates 12, 12') at 24 (see pg. 6, lines 1-7). The combination of familiar elements is likely to be obvious when it does no more than yield predictable results. See *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1395 – 97 (2007) (see MPEP § 2143, A.). It would have been obvious to a person of ordinary skill in the art to combine the bipolar separator plate assembly of Condeescu with the fuel cell (1) taught by Facci in order to provide a liquid cooled bipolar separator plate assembly which provides good distribution of gas, oxidant, and cooling fluid (*Condeescu*: see pg. 2, lines 21-24).

Regarding claim 9, Facci in view of Condeescu teaches the separator of claim 1, wherein at least one of the said anode and cathode sheets comprises a sealing gasket (*Facci*: gasket, 3; see pg. 6, lines 5-7) secured to the side opposite to the one whereto said corrugated conductive element is welded or metallurgically bonded to. Facci teaches in figure 1 that the gaskets (3) are on either side of the bipolar sheet (2). At least one of said anode and cathode sheets (*Condeescu*: distributor plates 11, 11') comprises a sealing gasket (*Facci*: gasket, 3) secured to the side opposite to the one whereto said corrugated conductive element (*Condeescu*: separator plate 12, 12') is welded or metallurgically bonded to.

Regarding claim 10, Facci in view of Condeescu teaches the separator of claim 1 wherein at least one of the said anode and cathode sheets (*Condeescu*: distributor plates 11, 11') comprises a current collector (*Facci*: 4) bonded to the side opposite to

the one whereto said corrugated conductive element (*Condeescu*: separator plate 12, 12') is welded or metallurgically bonded (*Facci*: see fig 1).

Although Facci does not expressly teach that the current collector is welded or metallurgically bonded to the side opposite to the one whereto said corrugated element is welded, he does teach that the bipolar sheet and the current collector could be made by a single integrated element (*Facci*: see pg. 6, lines 16-18). A person of ordinary skill in the art would have found it obvious to weld or metallurgically bond the current collector to the distributor plate taught by Condeescu in order to make it into a single element and keep it in place.

Regarding claim 11, Facci in view of Condeescu teaches the separator of claim 10 wherein said current collector is an electrically conductive reticulated element optionally selected from the group consisting of metal foams, metal meshes, expanded sheets and sintered metallic materials (*Facci*: see pg. 6, lines 11-13).

Regarding claim 12, Facci in view of Condeescu teaches a fuel cell stack comprising at least one separator of claim 1 (see fig. 1 of Condeescu and explanation for claim 1 above).

Regarding claim 13, Facci in view of Condeescu teaches the stack of claim 12 comprising at least one feed or discharge duct (*Condeescu*: outer gas channels 16, 17) in communication with said fluid passage holes (*Condeescu*: holes, 20) (*Condeescu*: see pg. 5, lines 23-26).

Allowable Subject Matter

Claims 5-8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The closet prior art, Condeescu, teaches a bipolar separator for a fuel cell stack, comprising a cathode sheet and an anode sheet, at least one of said sheets provided with fluid passage holes, wherein said sheets are welded through at least one corrugated conductive element and said sheets delimit a passage section of a cooling fluid. However, Condeescu fails to teach a separator wherein at least one corrugated conductive element adjoins said cathode and anode sheets only in one or more peripheral regions of the separator.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ASHLEY KWON whose telephone number is (571)270-7865. The examiner can normally be reached on Monday to Friday 7:30 - 5pm EST with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sines can be reached on (571) 272-1263. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A.K.

/Jonathan Crepeau/
Primary Examiner, Art Unit 1795